

statement of uncontroverted material facts.” However, Federal Rule 56 and Local Rule 56.1 apply only to Motions for Summary Judgment. Despite the aforementioned introductory language, Defendants are seeking dismissal for violating Federal Rule 9 by failing to plead averments of fraud with particularity. Accordingly, the Court will treat the instant motion as a Motion to Dismiss, which makes the statement of facts, or lack thereof, irrelevant.

Plaintiff’s claim is not one for fraud, so Rule 9 does not apply. A discovery of assets proceeding brought under Section 473.340 RSMo. is similar to common law actions of trover or conversion. Beverly Sue Ryan, P.A., Conservator for the Estate of Ruth Spiegelhalter v. William Spiegelhalter, 64 S.W. 3d 302, 305-306 (Mo. 2002). In discovery of assets claims, “the petition shall describe the property, if known, and shall allege the nature of the interest of the petition; it shall allege that title or possession of the property, or both, are adversely held or claimed.” Id at 308. Moreover, the pleadings must simply give reasonable notice of the nature and extent of the claim. Id. Plaintiff sets forth specific assets, including specific investment accounts at Dain Rauscher, and a check issued by the United States Government in the amount of \$5,3920.40, which reasonably describing the property at issue, giving Defendants notice as to the extent of the claim.

III. CONCLUSION

Accordingly, Defendants’ Motion to Dismiss is denied.

IT IS SO ORDERED.

DATE: May 7, 2007

/s/ Ortrie D. Smith

ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT